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9 FIDELITY NATIONAL TITLE COMPANY

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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 SANDRA PEREZ,

16 Plaintiff,

17 vs.

18 COUNTRYWIDE HOME LOANS., a
19 California Corporation,

20 Defendant.

21 COUNTRYWIDE HOME LOANS, INC., a
22 New York Corporation,

23 Cross-Complainant,

24 vs.

25 FIDELITY NATIONAL TITLE
26 COMPANY, TONY BAYARD DE VOLO
27 DBA LAWRENCE CAPITAL, INC., and
28 ROES 1-10,

Cross-Defendants.

) **CASE NO. C07 06402 JW**

)
) **FIDELITY NATIONAL TITLE COMPANY'S**
) **ANSWER TO AMENDED CROSS-**
) **COMPLAINT OF COUNTRYWIDE HOME**
) **LOANS, INC.**

25
26 Defendant Fidelity National Title Company ("Cross-defendant"), answers
27 Countrywide Home Loans, Inc.'s ("Countrywide") Amended Cross- Complaint (hereinafter,
28

1 “cross-complaint”) as follows:

2 1. On information and belief, Cross-defendant admits the allegations of
3 paragraph 1.

4 2. Cross-defendant avers that at all relevant times it was a California corporation,
5 and admits that it is qualified to do business in California and doing business in California.

6 3. On information and belief, Cross-defendant admits the allegations of
7 paragraph 3.

8 4. On information and belief, Cross-defendant admits the allegations of
9 paragraph 4.

10 5. Cross-defendant is without sufficient knowledge or information to form a
11 belief as to the truth of the allegations contained in paragraph 5, and on that basis denies each
12 and every allegation contained therein.

13 6. Cross-defendant is without sufficient knowledge or information to form a
14 belief as to the truth of the allegations contained in paragraph 6, and on that basis denies each
15 and every allegation contained therein.

16 7. Cross-defendant denies the allegations of paragraph 7 as they relate to it, and
17 is without sufficient knowledge or information to form a belief as to the truth of the
18 allegations as they relate to others, and on that basis denies said allegations.

19 8. On information and belief, Cross-defendant admits the allegations of
20 paragraph 8.

21 9. On information and belief, Cross-defendant admits the allegations of
22 paragraph 9.

23 10. Cross-defendant admits the allegations of paragraph 10.

24 11. On information and belief, Cross-defendant admits the allegations of
25 paragraph 11.

26 12. On information and belief, Cross-defendant admits the allegations of
27 paragraph 12.

28 13. Cross-defendant denies the allegations of paragraph 13.

1 14. In answer to paragraph 14, Cross-defendant incorporates by reference its
2 responses to the allegations incorporated into said paragraph, as if fully set forth herein.

3 15. On information and belief, Cross-defendant admits the allegations of
4 paragraph 15.

5 16. To the extent the allegations in paragraph 16 of the cross-complaint constitute
6 legal conclusions, cross-defendant responds that such allegations are not a proper subject for
7 admission or denial in an answer. To the extent that paragraph 16 contains factual
8 allegations, cross-defendant is without sufficient knowledge or information to form a belief
9 as to the truth of said allegations, and on that basis denies each and every allegation contained
10 therein.

11 17. In answer to paragraph 17, Cross-defendant incorporates by reference its
12 responses to the allegations incorporated into said paragraph, as if fully set forth herein.

13 18. Cross-defendant denies the allegations of paragraph 18 as they relate to it, and
14 is without sufficient knowledge or information to form a belief as to the truth of said
15 allegations as they relate to others, and on that basis denies said allegations.

16 19. To the extent the allegations in paragraph 19 of the cross-complaint constitute
17 legal conclusions, Cross-defendant responds that such allegations are not a proper subject for
18 admission or denial in an answer. To the extent that paragraph 19 contains factual
19 allegations, Cross-defendant denies said allegations as they relate to it, and is without
20 sufficient knowledge or information to form a belief as to the truth of said allegations as they
21 relate to others, and on that basis denies said allegations.

22 20. In answer to paragraph 20, Cross-defendant incorporates by reference its
23 responses to the allegations incorporated into said paragraph, as if fully set forth herein.

24 21. Cross-defendant denies the allegations of paragraph 21 as they relate to it, and
25 is without sufficient knowledge or information to form a belief as to the truth of said
26 allegations as they relate to others, and on that basis denies said allegations.

27 22. On information and belief, Cross-defendant admits the allegations of
28 paragraph 22.

1 23. Cross-defendant admits the allegations of paragraph 23 to the extent such
2 allegations are merely a statement of Countrywide's contentions. To the extent the
3 allegations in paragraph 23 of the cross-complaint constitute legal conclusions, Cross-
4 defendant responds that such allegations are not a proper subject for admission or denial in an
5 answer. To the extent that paragraph 23 contains factual allegations, Cross-defendant denies
6 said allegations as they relate to it, and is without sufficient knowledge or information to
7 form a belief as to the truth of said allegations as they relate to others, and on that basis
8 denies said allegations.

9 24. Cross-defendant admits the allegations of paragraph 24 as they relate to it, and
10 is without sufficient knowledge or information to form a belief as to the truth of said
11 allegations as they relate to others, and on that basis denies said allegations.

12 25. On information and belief, Cross-defendant admits the allegations of
13 paragraph 25.

14 26. On information and belief, Cross-defendant admits the allegations of
15 paragraph 26.

16 27. On information and belief, Cross-defendant admits the allegations of
17 paragraph 27.

18 AFFIRMATIVE DEFENSES

19 FIRST AFFIRMATIVE DEFENSE

20 The Cross-complaint and each purported cause of action alleged therein fail to state
21 facts sufficient to constitute a cause of action against this answering Cross-defendant.

22 SECOND AFFIRMATIVE DEFENSE

23 The Cross-complaint and each purported cause of action therein is barred, in whole or
24 in part, by the provisions of the California Code of Civil Procedure beginning with section
25 335 and continuing through section 349.4, including, but not limited to, sections 335.1, 337,
26 337, 338, 339, and 340.

27 THIRD AFFIRMATIVE DEFENSE

28 Cross-defendant is informed and believes that Cross-complainant's purported

1 damages, if any, as alleged in the Cross-complaint and in each purported cause of action
2 therein, were proximately caused, in whole or in part, by Cross-complainant's own
3 negligence, carelessness or other fault. Because of Cross-complainant's negligent conduct, it
4 is not entitled to any recovery. Alternatively, Cross-complainant's fault should be compared
5 with that of Cross-defendant, if any, and any recovery from Cross-defendant should be
6 reduced in proportion to the fault attributable to Cross-complainant.

7 FOURTH AFFIRMATIVE DEFENSE

8 Cross-defendant is informed and believes and thereon alleges that Cross-complainant
9 engaged in misconduct and in behavior offensive to equitable principles with respect to the
10 subject matter of Cross-complainant's claims, and that Cross-complainant's Cross-complaint
11 and each and every cause of action therein are therefore barred by the doctrine of unclean
12 hands.

13 FIFTH AFFIRMATIVE DEFENSE

14 Cross-defendant is informed and believes that by the exercise of reasonable effort,
15 Cross-complainant could have mitigated the amount of damages, if any, it suffered, but
16 Cross-complainant has failed and refused, and continues to fail and refuse, to exercise
17 reasonable effort to mitigate said damages, if any there were.

18 SIXTH AFFIRMATIVE DEFENSE

19 Cross-defendant is informed and believes and thereon alleges that each and every
20 cause of action of the Cross-complaint is barred by virtue of the knowing and voluntary
21 waiver by Cross-complainant of the rights alleged by it in its Cross-complaint.

22 SEVENTH AFFIRMATIVE DEFENSE

23 Cross-defendant is informed and believes and thereon alleges that Cross-
24 complainant's claims are barred by laches in that Cross-complainant has unreasonably
25 delayed in asserting them.

26 EIGHTH AFFIRMATIVE DEFENSE

27 Cross-defendant is informed and believes and thereon alleges that each and every
28 cause of action of the Cross-complaint is barred in that Cross-complainant, through its

1 conduct, acts, and deeds, caused this answering Cross-defendant to change position and to act
2 to its detriment and prejudice, and Cross-complainant is thereby estopped from asserting the
3 claims raised in its Cross-complaint.

4 NINTH AFFIRMATIVE DEFENSE

5 Cross-complainant is barred, in whole or in part, from obtaining the relief it seeks in
6 the Cross-complaint because it would be unjustly enriched if such relief were awarded.

7 TENTH AFFIRMATIVE DEFENSE

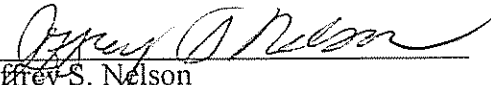
8 Without conceding that Cross-complainant has been damaged or injured, Cross-
9 defendant is entitled to offset and recoup against any recovery had against it or any judgment
10 that may be entered against it and in favor of Cross-complainant, all obligations owed by
11 Cross-complainant to Cross-defendant and all amounts paid or invested by Cross-defendant
12 that have inured to the benefit of cross-complainant.

13 1. That Cross-complainant take nothing by its Cross-complaint and that the same
14 be dismissed with prejudice as against this answering Cross-defendant;

15 2. That Cross-defendant be awarded its costs of suit; and

16 3. For such other and further relief as the Court may deem just and proper.

17
18 Dated: July 21, 2008

19 
20 Jeffrey S. Nelson
21 Attorney for Cross-Defendant
22 FIDELITY NATIONAL TITLE
23 COMPANY
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PROOF OF SERVICE

I am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. My business address is 100 North Wiget Lane, Suite 150, Walnut Creek, California 94598.

On the date entered below, I served the within:

1. FIDELITY NATIONAL TITLE COMPANY'S ANSWER TO AMENDED CROSS-COMPLAINT OF COUNTRYWIDE HOME LOANS, INC.

on the parties in said action by placing a true copy thereof as indicated below, addressed as follows:

Kimberly Pederson
Law Foundation of Silicon Valley
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Attorney to be Noticed

Bryan Cave, LLP
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Attorney for Defendant and Cross-Complainant Countrywide Home Loans, Inc. erroneously sued as Countrywide Home Loans

(√) BY MAIL: I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail, which envelope(s) was then sealed and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at Walnut Creek, California, on the referenced date in the ordinary course of business; and there is delivery service by United States mail at the place so addressed in the City of Walnut Creek, County of Contra Costa, State of California.

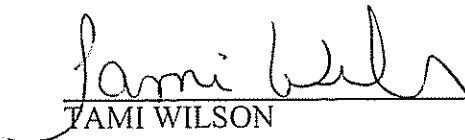
() BY PERSONAL SERVICE: I caused such envelope to be delivered by hand on the office(s) of the addressee(s).

() BY OVERNIGHT MAIL: I caused such envelope to be delivered by Golden State Overnight to the office(s) of the addressee(s).

() BY FACSIMILE: I caused a copy of such document to be sent via facsimile transmission to the office(s) of the parties above stated.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 DATED: July 21, 2008

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TAMI WILSON